

FREDERICK W. GASTON
STATE BAR # 231179

GASTON & GASTON, APLC
1010 SECOND AVE., SUITE 1770
SAN DIEGO, CA 92101
TELEPHONE: (619) 398-1882
FAX: (619) 398-1887

MICHAEL P. SOUSA
STATE BAR # 229416

LAW OFFICES OF MICHAEL P. SOUSA
3232 GOVERNOR DRIVE, SUITE A
SAN DIEGO, CA 92122
TELEPHONE: (858) 453-6122
FAX: (858) 453-2155

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 641

JLS(WMC)

Case No.:

NOLA LONG, individually, and the
ESTATE OF DOMINIC LONG deceased,
by his parent and successor in interest Nola
Long,

Plaintiffs,

vs.

CITY OF SAN DIEGO, OFFICER
TRAVIS HANBY and DOES 1 - 20,

Defendants.

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL

1. 42 U.S.C § 1983 Civil Rights Violations;
2. 42 U.S.C § 1983 Civil Rights Violations
3. 42 U.S.C § 1983 Civil Rights Violations
– Unlawful Policies Customs or Habits;
4. Wrongful Death - Negligence;
5. Wrongful Death - Battery;
6. Wrongful Death – Civil Code § 52.1 Civil Rights Violations

DEMAND FOR JURY TRIAL

COMES NOW, PLAINTIFFS, and make the following allegations:

GENERAL ALLEGATIONS

1) Plaintiff's decedent, DOMINIC LONG ("LONG") was a resident of the City and County of San Diego until he was shot and killed on July 24, 2007.

2) Plaintiff Nola Long is the parent of Plaintiff decedent, Dominic Long. Plaintiff brings this action, and the claims set out below, as an individual on her own behalf under both federal and California law. Plaintiff also brings this action on behalf of the Estate of Dominic Long, deceased, in her representative capacity as successors in interest.

3) Decedent Dominic died intestate in the City of San Diego, County of San Diego, State of California. No special administrator or personal representative of the Dominic Long has been appointed by any Court.

4) The plaintiffs' decedent is Dominic Long, who, at the time of his death on July 24, 2007, was a 32 year-old resident of the City of San Diego, California. At the time of his death, Dominic Long was single and had no children.

5) At all times relevant hereto, defendants Travis Hamby and DOES 1-10 were, and still are, residents of the County of San Diego, State of California, and were duly appointed and acting police officers for the City of San Diego. They are sued individually and in their capacities as employees of the City of San Diego.

6) Defendant City of San Diego is, and at all times mentioned herein was, a municipality within the State of California and is the employer of the above named individual defendants and other police officers referred to herein. The individual defendants performed all of the herein alleged acts for, and in the name of defendant City of San Diego.

7) The true names or capacities, whether individual, corporate, associate or otherwise, of defendants named herein as DOES 1 through 20, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs will amend this complaint to show the unknown defendants'

1 true names and capacities when the same have been ascertained. Plaintiffs are informed and believe, and
2 thereon allege, that all defendants sued herein as DOES are in some manner responsible for the acts herein
3 alleged.

4
5 8) Each of the acts of the individually named defendants and DOES 1 through 10, were done by
6 them by virtue of and under their authority as police officers for Defendant City of San Diego, and under the
7 color and pretense of the statutes, ordinances, regulations, customs and usages of the State of California.
8 Said defendants were the servants, agents, and employees of Defendant City of San Diego, and in doing the
9 acts hereinafter described, acted within the course and scope of their employment. Their acts herein alleged
10 are, therefore, imputed to Defendant City of San Diego.

11
12 9) Prior to the filing of this complaint, Plaintiff filed timely claims against defendant City of San
13 Diego for the injuries alleged herein. These claims were denied on December 7, 2007.

14 **FACTUAL ALLEGATIONS**

15 10) It is believed and therefore alleged that Officer Hamby completed his police training
16 approximately twenty months before his encounter with decedent.

17
18 11) It is believed and therefore alleged that at the time of the shooting, Officer Hamby was
19 assigned to patrol the Northern Division. Officer Hamby was working alone and did not have a partner
20 with him at the time of the shooting.

21 12) At approximately 10:13 a.m. on July 24, 2007 Officer Hamby responded to a police to a
22 call reporting that a woman had been assaulted in the area of Mission Bay Park. Upon arriving to Mission
23 Bay Park, Officer Hamby encountered decedent.

24
25 13) A police helicopter was present at the time of the shooting, and did assist Defendant
26 Hamby in locating decedent. Though the helicopter did video record the scene after the fatal shooting, no
27 video was taken of the shooting.

1 23) As a direct and proximate result of the unlawful acts, excessive force and recklessness
2 described above, decedent Dominic Long suffered severe injuries and loss of his life. By reason of these
3 acts, decedent was, and his estate and successors in interest now are, entitled by virtue of 42 U.S.C. Section
4 1983 et seq., to general and compensatory damages in an amount to be proven at trial.
5

6 24) As a further result of the actions of said Defendants alleged above, decedent Dominic Long's
7 estate incurred reasonable funeral expenses and loss of such income as Dominic Long would have earned in
8 his lifetime. The Estate of Dominic Long and his successors in interest have lost such estate as decedent
9 might reasonably have accumulated in his natural life expectancy. Thus, Plaintiffs are entitled to damages in
10 an amount to be proven at trial.
11

12 25) The aforesaid acts of Defendant Hamby were done willfully, maliciously and/or with callous
13 and reckless indifference to and disregard for decedent's safety and continued life, therefore entitling
14 Plaintiffs to punitive damages in an amount to be proven at trial.
15

16 **SECOND CAUSE OF ACTION**

17 [42 U.S.C. § 1983 Constitutional Violations
18 By Plaintiff Nola Long, Individually]
19

20 26) Plaintiffs reallege and incorporate by reference each and every allegation contained in the
21 preceding paragraphs as though fully set forth herein.
22

23 27) As a result of the acts alleged above, particularly the unjustified, unnecessary and excessive
24 use of deadly force which caused the death of decedent Dominic Long, as well as the unreasonable acts
25 leading up to and culminating in the death of Dominic Long, Plaintiffs Nola Long suffered the loss of her
26 son. Thus, the acts of defendant Hamby deprived Plaintiff Nola Long of their constitutionally protected due
27 process right to the love, support, affection and companionship of their son, in violation of Plaintiff Nola
28 Long's rights as guaranteed by the Fourteenth Amendment to the U.S. Constitution, particularly the due
process clause of the Fourteenth Amendment.

28) The acts of Defendants and each of them as described above also amounted to recklessness which caused injury and ultimately death to Dominic Long, thus causing a further violation of the Fourteenth Amendment rights of Plaintiff Nola Long. Said acts proximately caused the death of decedent, entitling Plaintiff Nola Long to general and compensatory damages pursuant to 42 U.S.C. section 1983 et seq. in an amount to be proven at trial.

29) The aforesaid acts of Defendant Hamby were done willfully, maliciously and/or with callous and reckless indifference to and disregard for decedent's safety and continued life, therefore entitling Plaintiffs' to punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

[42 U.S.C. § 1983 Constitutional Violations via
Unlawful Policies, Customs or Habits]

30) Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

31) On information and belief Plaintiffs allege that Defendant City of San Diego, through its police department, has unlawful policies, customs and habits of improper and inadequate hiring, training, retention, discipline and supervision of its police officers, including Officer Hamby and others, proximately causing the constitutional deprivations, injuries and damages alleged in the First and Second Causes of Action. As a result, Plaintiffs are entitled to damages pursuant to Title 42 U.S.C. § 1983, in an amount to be proven at trial.

32) Further, on information and belief Plaintiffs allege that Defendant City of San Diego, through its police department, has an unlawful policy, custom or habit of permitting, condoning or ratifying the unnecessary and unjustified use of force by its police officers, including the unjustified use of deadly force.

33) As a proximate result of the unlawful policies, customs and habits alleged above, Plaintiffs suffered the constitutional violations alleged in the First and Second Causes of Action, the injuries alleged in

1 the First and Second Causes of Action and the injuries alleged the preceding paragraphs and thus Plaintiffs
 2 are entitled to general and compensatory damages in an amount to be proven at trial.

3 **FOURTH CAUSE OF ACTION**

4 [Negligence/Wrongful Death Under California Law
 5 by Plaintiff Nola Long Individually, and as
 6 Successors in Interest to the Estate of Dominic Long]

7 34) Plaintiffs reallege and incorporate by reference each and every allegation contained in the
 8 preceding paragraphs as though fully set forth herein.

9 35) By the acts alleged above, Defendants and other employees of the City of San Diego were
 10 negligent and breached their duty of due care, thereby causing the injuries to and death of Dominic Long as
 11 described in the First and Second Causes of Action, and the damages described in the preceding paragraphs.
 12 As a result, Plaintiffs are entitled to general and compensatory damages under California law in an amount
 13 to be proven at trial.
 14

15 36) As a result of the negligence described herein, Plaintiff Nola Long is entitled to damages
 16 under California law according to proof at trial for the wrongful death of her son, including, but not limited
 17 to, loss of love, companionship, comfort, affection, society, moral support, financial support, services,
 18 advice, training, and funeral expenses, for which Defendants and each of them are responsible.

19 **FIFTH CAUSE OF ACTION**

20 [Battery/Wrongful Death Under California Law
 21 by Plaintiff Nola Long Individually, and as
 22 Successors in Interest to the Estate of Dominic Long]

23 37) Plaintiffs reallege and incorporate by reference each and every allegation contained in the
 24 preceding paragraphs as though fully set forth herein.

25 38) By the acts alleged herein, particularly defendant Hamby's act of shooting and killing
 26 Plaintiff's son, Dominic Long, as described in the Factual Allegations and the First and Second Causes of
 27 Action, Defendants committed a battery upon Dominic Long which caused him to suffer injuries and
 28

1 wrongful death, thereby entitling Plaintiff to damages pursuant to California law. As a result Plaintiff is
 2 entitled to general and compensatory damages in an amount to be proven at trial.

3 39) As a result of these acts Plaintiff Nola Long suffered the loss of her son and the damages
 4 described in the preceding paragraphs, entitling her to damages in an amount to be proven at trial for the
 5 wrongful death of her son, including, but not limited to, loss of love, companionship, comfort, affection,
 6 society, moral support, financial support, services, advice, training, and funeral expenses, for which
 7 Defendants and each of them are responsible.

8
 9 40) In committing the acts alleged above, Defendant Hamby acted maliciously and/or was guilty
 10 of a wanton and reckless disregard for the rights and feelings of Plaintiff's decedent and by reason thereof
 11 Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial.
 12

13 **SIXTH CAUSE OF ACTION**

14 [Civil Code § 52.1 Civil Rights Violations/Wrongful Death
 15 Under California Law by Plaintiff Nola Long Individually,
 and as Successors in Interest to the Estate of Dominic Long]

16 41) Plaintiffs reallege and incorporate by reference each and every allegation contained in the
 17 preceding paragraphs as though fully set forth herein.

18 42) The acts alleged above, particularly the acts of unjustified physical violence, including the
 19 fatal shooting of decedent, are in violation of Plaintiffs' rights guaranteed by the California Constitution
 20 (Article I, Sections 7 and 13) and the United States Constitution, particularly the Fourth and Fourteenth
 21 Amendments thereto. These acts were committed through threats, intimidation and/or coercion. Therefore,
 22 Plaintiffs are entitled to damages pursuant to California Civil Code section 52.1(b).
 23

24 43) By reason of the acts of Defendants and each of them alleged above, Plaintiff suffered the
 25 injuries and damages alleged in the preceding paragraphs. Plaintiff is therefore entitled to general and
 26 compensatory damages against Defendants and each of them in an amount to be proven at trial.
 27
 28

1 44) In committing the acts alleged above, Defendants Hamby acted maliciously and oppressively
2 and by reason thereof Plaintiff demands exemplary and punitive damages in an amount to be proven at trial.
3

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for judgment against defendants and each of them as follows:

- 6 1. For general and compensatory damages against defendants and each of them in an amount to be
7 proven at trial;
8 2. For exemplary and punitive damages against defendant Hamby only, in an amount to be proven at
9 trial;
10 3. For costs of suit herein, including reasonable attorneys fees; and,
11 4. For such other relief as the Court deems proper.

12 Respectfully Submitted,

13
14 DATED: 3-26-08

15
16 GASTON & GASTON, APLC
17 BY: [Signature]
18 FREDERICK W. GASTON
19 ATTORNEYS FOR PLAINTIFF

20 DATED: 3/26/08

21
22 THE LAW OFFICES OF MICHAEL P.
23 SOUSA
24 BY: [Signature]
25 MICHAEL P. SOUSA
26 ATTORNEYS FOR PLAINTIFF

27 Plaintiffs hereby demand a jury trial in this action.

28 DATED: 3-26-08

GASTON & GASTON, APLC
BY: [Signature]
FREDERICK W. GASTON
ATTORNEYS FOR PLAINTIFF

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

149506 - SR
* * C O P Y * *
April 08, 2008
16:28:24

Civ Fil Non-Pris

USAO #.: 08CV0641
Judge...: JANIS L. SAMMARTINO
Amount.: \$350.00 CK
Check#.: BC#2062

Total-> \$350.00

FROM: LONG V. CITY OF SD
CIVIL FILING

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nola Long; Estate of Dominic Long

(b) County of Residence of First Listed Plaintiff Kings
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See Attachment

DEFENDANTS

08 APR -8 PM 4:20
City of San Diego; Travis Hanby; Does 1-20County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 641

JLS(WMC)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983

Brief description of cause:

Civil Rights Violations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

April 8, 2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

149506 350.

4/8/08

CR

ATTACHMENT - I(c)

Attorneys:

Frederick W. Gaston

Gaston & Gaston, APLC
1010 Second Ave., Suite 1770
San Diego, CA 92101
Telephone: 619-398-1882

Michael P. Sousa

Law Offices of Michael P. Sousa
3232 Governor Dr., Suite A
San Diego, CA 92122
Telephone: 858-453-6122